# Supreme Court of the United States

OCTOBER TERM, 1947

NO. 590

HARRIS KENNEDY, ET AL.

PETITIONERS

VERSUS

SILAS MASON COMPANY

RESPONDENT

ON WRIT OF CERTIORARI
TO THE UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE FIFTH CIRCUIT

## BRIEF AMICUS CURIAE

JUNE P. WOOTEN

*Amicus Curiae*

THE QUAPAW PRINTING COMPANY, LITTLE ROCK

## INDEX OF SUBJECTS



## TABLE OF CASES

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### Petitioners were Employees of Respondent

Respondent contends that the petitioners were not employees of the contractor but were employees of the Government. It asserts that according to the common law conception of master and servant with its independent contractor exception the relationship of employer-employee did not exist between respondent and the petitioners, because some degree of control and supervision was exercised by the Government. Petitioners believe the degree of control and supervision reserved and exercised by the Government in the execution of the contract was not sufficient and extensive

enough to make the respondent a mere agent of the Government. The Fair Labor Standards Act contains broad definitions of "employer," "employee" and "employ." The contract between the Government and the appellee specifically provided that the petitioners should be considered employees of appellee. (Art. IV-A. 7 45). Although it is realized that the mere statement in the contract is not determinative of the true relationship, yet the additional requirements of the contract which were observed by the contracting parties providing that respondent should employ petitioners and others who were to work at the Louisiana Ordnance Plant, pay them, exercise control and supervision over them in their employment, withhold their income tax and report same, make payments of employment security taxes, social security taxes and do everything usually done by employers, bring petitioners within the employee relationship with respondent. At no time were the employees advised nor was it ever suggested by anyone prior to the institution of this suit that they were not employees of respondent, but were employees of the Government.

In **Rutherford Food Corporation v. McComb**, 329 U. S. 23, 67 S. Ct. 1473, it was said

> "This Act (referring to the Fair Labor Standards Act) contains its own definitions, comprehensive enough to require its application to many persons and working relationships, which prior to this Act, were not deemed to fall within an employer-employee category."

Reference was made to **Walling v. Portland Terminal Company**, 330 U. S. 148, 67 S. Ct. 639; **United States v. Rosenwasser**, 323 U. S. 360; 65 S. Ct. 295, 89 L. Ed. 301. **Williams v. Jacksonville Terminal Co.**, 315 U. S. 386; 62 S. Ct. 659; 86 L. Ed. 914. The doctrine is well established by the above decisions that the coverage of the Act is not limited to the master-servant relationship, but is more extensive and depends upon

the history, terms and purposes of the legislation, takes its color from its surroundings, and must be read in the light of the mischief to be corrected and the end to be obtained. **NLRB v. Hearst Publications**, 322 U. S. 111; 64 S. Ct. 851.

To deny to employees of contractors operating under a cost-plus-a-fixed-fee contract with the Government the protection, rights, benefits and privileges of the Fair Labor Standards Act would be to eliminate many million workers from its benefits. There can be no distinction in law or reason why employees doing the same kind of labor upon the same type of materials which are to be devoted to the same purpose, should not be covered by the Act when they work for DuPont and be excluded from the Act when they work for respondent or any other Governmental contractor on a cost-plus-a-fixed-fee contract.

Inasmuch as the Fair Labor Standards Act is a part of the social legislation of the 1930's and is of the same general character as the National Labor Relations Act and Social Security Act, decisions interpreting the latter two acts are persuasive in the consideration of a similar coverage under the Fair Labor Standards Act. See **Rutherford Food Corporation v. McComb**, Supra. Petitioners believe that the decision of the court in the case of **NLRB v. Atkins & Company**, 331 U. S. 398, is controlling. Every point upon which the respondent relies to exclude petitioners in the instant case were present in the Atkins case.

In the Atkins case certain employees of Atkins and Company, a concern engaged in the manufacture of items necessary for the war, were militarized as auxiliary military police at the request of the War Department. The guards performed such duties as inspecting persons, packages, persons carrying cash to various parts of the plant and generally surveying the premises to detect fires, suspicious circumstances and sabotage. The guards were enrolled as civilian auxiliaries to the

military police under War Department regulations issued pursuant to Executive Order No. 8972. The purpose of the military organization of the plant guards was to increase the authority, efficiency and responsibility of guard forces at plants important to the prosecution of the war and through military training to provide auxiliary forces throughout the United States to supplement the Army in wartime emergency situations. The military authorities reserved the right to veto the hiring or firing of any plant guard where such action by the employer might impair the efficiency of guard forces. They were subject to call for military service even where emergencies arose at places other than the plants where they worked. Military plant guard officers were authorized to exercise direct control over the guard forces in matters relating to military instruction and duties as auxiliary military police after consultation with and, if possible, concurrence by the plant management. The guards were required to sign agreements with the United States wherein it was agreed that the guards would support and defend the Constitution, bearing faith and allegiance to same, and would faithfully discharge their duties as civilian auxiliary to the military police. The Articles of War were read to them and they were subject to military law during their employment. The regulations provided that the guards could be court-martialed where no other effective form of punishment would be effective.

Atkins Company recruited the personnel for the guard forces through its ordinary employment channels and it had power to initiate discharge from the forces subject to the approval of the military. The guards were at all times carried on the company's regular pay roll and rate of compensation was determined under the same procedure as other employees and they were paid in the same manner. The company maintained its liability to the guards on matters of social security and workmen's compensation and was obliged to obey all minimum wage and maximum hour

requirements.

Most of the rights exercised by Atkins Company were identical with those exercised by respondent in its operation of the Louisiana Ordnance Plant. Respondent recruited all of the personnel, including the petitioners, through its ordinary employment channels, prescribed the duties of those employed, saw to their training, assigned them at the plant in accord with the need and requirements of the production schedule, and the qualifications of the worker, promulgated and enforced measures for the control of the employees while on the premises of the plant and the supervision of them while in the discharge of their employment, determined their wage rates and schedules in accordance with the procedures prescribed by the agencies set up during the war emergency, carried the men on their regular pay rolls, paid them by check drawn to respondent's account, withheld income tax from their wages, paid employment security benefits upon them in the name of respondent, made provisions for workmen's compensation insurance, initiated their discharge and actually effected the discharge. The only right reserved by the Government concerning the discharge of employees was in the event the Government determined that an individual employee should be discharged because he was incompetent or dangerous to the security of the United States.

In the Atkins case the Court reasoned:

> "In this setting, it matters not that respondent was deprived of some of the usual powers of an employer such as the absolute power to hire and fire the guards and the absolute power to control their physical activities in the performance of their services. Those are relevant but not exclusive indicia of an employee-employer relationship under this statute. As we have seen, judgment as to the existence of such a relationship for the purpose of this Act must be made with more than the

common law concepts in mind. That relationship may spring as readily from the power to determine the wages and hours of another, coupled with obligation to bear the financial burden of those wages and the receipt of the benefits of the hours worked as from the absolute power to hire and fire or the power to control all the activities of the worker. In other words, where the conditions of the relation are such that the process of collective bargaining may appropriately be utilized as contemplated by the Act, the necessary relationship may be found to be present."

The courts have always given the greatest consideration to the view and action taken by the agency charged by law with the administration of an Act. In numerous decisions this court has said that the interpretation of the administrator of the Wage and Hour Act should be given great weight. The responsibilities of the Administrator of an Act, such as the Fair Labor Standards Act or the National Labor Relations Act, and determinations of the Administrator of the complex situations confronting him in the performance of his duties, are the reason for the policy announced above. In the Atkins case this principle found expression of the court in the following language:

"The board's determination that there was a relationship in this case deserving of statutory protection does not reflect an isolated or careless reconciliation of the rights guaranteed by the Act with the important wartime duties of plant protection employees. In the course of its administration of the Act during the war, the board was faced with this problem many times. It was well acquainted with the important and complex considerations inherent in the situation. The responsibility of representing the public interest in such matters and of reaching a judgment after giving due weight to all the relevant factors lay primarily with the board. In the absence of some compelling

evidence that the board has failed to measure up to its responsibility, courts should be reluctant to overturn the considered judgment of the board and to substitute their own ideas of the public interest."

In the case now before the court, the Wage and Hour Division of the Department of Labor filed a brief with the trial court and with the Fifth Circuit Court of Appeals and will probably file a brief as amicus curiae in this court. The official position taken by the Wage and Hour Division is that the petitioners are within the provisions of the Fair Labor Standards Act.

To determine whether petitioners were employees of respondent or (as the lower Court held) employees of the Government, the language of the contract between respondent and the Government should be taken into consideration.

The opinion of the Circuit Court of Appeals states: "The appellants were working directly under the supervision and control of the Government." (R. 251) Neither the terms of the contract nor the facts of actual employment sustain such a holding. The contract sets out that appellants were to work directly under the supervision and control of the respondent, an independent contractor.

Reference is made to the following excerpts from the contract:

Art. VII-A. " . . . . . other representatives of the contractor having supervision or direction of the operation of the plant . . . . . " (R. 70,71)

Art. III-A. " . . . . The contractor shall hire or select the key personnel necessary for the operation of the plant . . . . . shall proceed to train such personnel in the duties and functions of their respective positions . . . . " (R. 41,42)

Art. IV-A. 1. " . . . . . the contractor shall undertake all preparations necessary for the subsequent operation of the plant, including necessary training of personnel for such operation in addition to the key personnel trained pursuant to Title III hereof, and all other services incident to setting up an efficient and going operating force." (R. 43,44)

Art. IV-A. 7. " . . . . . contractor is authorized and shall do all things necessary or convenient in the operating and closing down of the plant . . . . including . . . . the employment of all persons engaged in the work hereunder (who shall be subject to the control and constitute employees of the contractor) . . . " (R. 45)

Art. IV- D. b. "All persons employed by the contractor in the manufacture or furnishing of all materials . . . . . used in the performance of the contract will be paid . . . . not less than the minimum wages as determined by the Secretary of Labor . . . . . " (R. 48)

Art. IV-D. c. "No person employed by the contractor in the manufacture . . . of the materials . . . . articles . . . . . used in the performance of the contract shall be permitted to work in excess of eight hours in any one day . . . . " (R. 48)

Art. V-A. 1 "Contractor shall be reimbursed . . . . for . . . . expenditures in the performance of the work under this contract for (a) all labor . . . . including the training of operating personnel." (R. 61) d. "Transportation and training expenses of . . . . . the necessary field forces . . . . for the prosecution of the work . . . . of such other employees of the contractor whose full time is devoted to the work under this contract as is actually incurred in connection with such work . . . . . " (R. 52) f. Salaries of employees of the contractor engaged directly on the work . . . . whether at the plant or employed full time at the contractor's offices . . . . " (R. 52)

Art. VII-A. " . . . . Government shall hold con-

tractor harmless against any loss .... or damage ..... except ..... that such loss ..... damage .... is due to the personal failure on the part of the corporate officers of the contractor, or other representatives of the contractor having supervision or direction of the operation of the plant ....." (R. 70,71)

The only semblance of control which the Government retained over the workmen was in the following provisions of the contract:

Art. IV-A. 4 "The work under this Title IV shall be performed in accordance with the current applicable specifications which will be furnished by the contracting officer." (R. 44)

Art. V-A d "No male person under sixteen years of age and no female under eighteen years of age and no convict will be employed by the contractor." (R. 52)

Art. VII-G 6. "The contracting officer may require the contractor to dismiss from the work any employee the contracting officer deems incompetent or whose retention is deemed to be not in the public interest, subject, however, to appeal under the provisions of Article VII-N for reinstatement of such employee." (R. 76).

If it had been the intention of the Government to consider petitioners as its employees instead of designating them employees of respondent, it would have been a simple matter to have framed the terms of the contract to read that way. The Government would then have been under no obligation to provide the employee with the various benefits called for in the contract, which benefits only a private concern was under a legal obligation to furnish. The contract not only contained provisions for such benefits, but the terms of the contract were in all things performed. (R.20)

The opinion of the lower court says: "These employees were put in the munitions factories by gov-

ernment command on the theory that they were an integral part of the war machine — not because they were an essential part of the interstate commerce." (R. 253)

The Court did not cite any statutory authority for a "government command" to persons to work in a munitions factory, nor is there any. Petitioners voluntarily entered the employment of respondent as the result of individual contracts; they were controlled by respondent, and if any were discharged, it was respondent, not the Government, that dismissed them.

Petitioners were not a part of the war machine but, insofar as their willingness to work was concerned, fell in the same category as other loyal citizens. Much of the work performed in the war factories was done by housewives, who, with husbands or sons in the armed services, with a household to maintain, children to care for and send to school, took time to put in long, arduous hours at a nearby war plant. They were not induced to do so by legislative or executive command, but each was prompted by a sense of profound duty and love for his country.

## Petitioners Produced Goods for Commerce

The respondent maintains that the petitioners were not engaged in the production of goods for commerce. The basis of respondent's contention seems to be in a very narrow definition of the term "commerce," seeking to give it a special limited meaning instead of the constitutional meaning that it deserves. The respondent says in effect that since munitions of war, in wartime, are not the subject of trade and traffic in a commercial sense, they cannot constitute goods and that, therefore, the transportation of them by the Government after taking title at the plant does not constitute the production of goods for commerce under the Fair Labor Standards Act. This court is firmly committed to the doctrine that interstate commerce is

the transportation of goods from one state to another state. The crossing of a state line appears to be the most determinative single factor. In a constitutional sense it is not necessary that the thing transported be goods in a commercial sense. Citations will not be repeated here, as they are set out in the admirable brief filed by petitioners. The framers of the Act in order to eliminate any controversy over the definition of interstate commerce expressly included therein the word "transportation" making the definition read, "commerce means trade, commerce, transportation, transmission, or communication among the several states or from any state to any place outside thereof." At the time these goods were processed it was understood that they would be transported from the place of processing in Louisiana to another state. This literally brings it within the definition of the Act. Construction of the other social legislation of the same period is in accord with the above announced principle.

The court below took the position that since the goods produced at the Louisiana Ordnance Plant were munitions of war to be devoted to the prosecution of the war they could not be classified as goods under the Act and their manufacture and transportation were administrative acts of the sovereign power. With due respect to the court below, the reasoning is not consistent nor can its philosophy be extended to a logical conclusion. In the same opinion the court states:

> "Had the defendant been engaged under its contract in the business of manufacturing munitions of war, either as a general proposition or under contract by which it agreed to produce and sell to the Government, either at a fixed price or at a price to be fixed from time to time, then we are of the opinion that it would come within the Fair Labor Standards Act." (R. 250)

It is impossible for the respondent to draw a dis-

tinction between tanks produced by Chrysler, explosives by DuPont, rifles by Winchester, trucks by General Motors, aluminum by Aluminum Company of America and airplanes by North American, the total production being taken by the Government and the prices for same being subject to renegotiation, and munitions produced at the Louisiana Ordnance Plant. There has been advanced no good reason why the employees of the Louisiana Ordnance Plant should be excluded from the protection of the Act when the employees of Winchester, Chrysler, DuPont, etc., are covered.

The philosophy of the opinion that the procurement of munitions to be devoted exclusively to the prosecution of the war or the preparation for same, or training during and after hostilities, is an administrative act of the Government, would destroy the Fair Labor Standards Act during wartime if it were carried to its logical conclusion. If the act of procurement of munitions produced at the Louisiana Ordnance Plant is an administrative act of the Sovereign, then the procurement of tanks, artillery, trucks, airplanes and the other items necessary to the prosecution of a war would be administrative acts of the Government. Inasmuch as the Fair Labor Standards Act was passed by Congress when the war clouds were gathering, and in view of the oft repeated attempts to suspend its application to industries engaged in the production of war goods, the rejection of such attempts by Congress would appear to be conclusive.

The Administrator of the Fair Labor Standards Act, who is charged with the responsibility of administering it and has the duty of carrying out the wishes of Congress so far as they may be expressed or implied in the Act, took all of those matters into consideration. The war clouds are gathering again. Prophesies of the impending doom of civilization by an atomic war are sounded. Certainly the great mass of men and women who manned the war factories in the last war,

and who will be expected to man them in the next, should not be discriminated against because they were employed by a contractor operating on a cost-plus-a-fixed-fee basis. Discrimination against part of the workers of this country solely because of the type of contract under which their employer is producing goods, is entirely out of harmony with the purposes of the Fair Labor Standards Act.

Respectfully submitted,

JUNE P. WOOTEN

*Amicus Curiae*

p. 4.

# SUPREME COURT OF THE UNITED STATES

No. 590.—October Term, 1947.

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| Harris Kennedy, et al., Petitioners, v. Silas Mason Company. | On Writ of Certiorari to the United States Circuit Court of Appeals for the Fifth Circuit. |

[May 17, 1948.]

Mr. Justice Jackson delivered the opinion of the Court.

This case involves questions as to the application of the overtime provisions of the Fair Labor Standards Act [1] to certain persons who worked in a government-owned plant in which respondent produced munitions under a cost-plus-fixed-fee contract with the War Department. It involves such subsidiary issues as whether the plaintiffs were employees of the Government or of the private contractor, whether munitions produced for shipment across state lines in war use are produced for "commerce" [2] and whether they are "goods" [3] within the meaning of the Act. Substantial claims of petitioners may be denied or large sums added to the cost of the war by the answers to these questions, and many cases other than this will be controlled by its decision.

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[1] Act of June 25, 1938, c. 676, 52 Stat. 1060, 29 U. S. C. § 301.

[2] The Act defines commerce as follows: "Commerce" means trade, commerce, transportation, transmission, or communication among the several States or from any State to any place outside thereof.

[3] The Act defines goods as follows: "Goods" means goods (including ships and marine equipment) wares, products, commodities, merchandise, or articles or subjects of commerce of any character, or any part or ingredient thereof, but does not include goods after their delivery into the actual physical possession of the ultimate consumer thereof other than a producer, manufacturer, or processor thereof.

The manner in which the case has thus far developed raises the question whether as a matter of good judicial administration this Court should attempt to decide these far-reaching issues on this record.

No one questions that, taking its allegations at their face value, the complaint in this case states a cause of action under the Fair Labor Standards Act. Summary judgment has gone against the plaintiffs because, by affidavit and exhibits, the allegations have been found unsustainable. The defendant filed a motion for summary judgment under Rule 56 of the Federal Rules of Civil Procedure[4] "on the ground that the defendant is entitled to judgment as a matter of law." The motion, so far as the Fair Labor Standards Act was concerned, was based on an affidavit "which states facts showing that as a matter of law neither complainants nor defendant were covered" by the Act in that neither "were engaged in commerce or in the production of goods for commerce." Made part of the affidavit by reference were defendant's construction and operation contract with the Government and some 22 supplements or change orders covering nearly 200 pages of the record. The complainants then filed a supplemental complaint which added by reference all regulations and interpretative bulletins of the Department of Labor and Administrator of the Fair Labor Standards Act clarifying and explaining it. And, as against defendant's affidavit and exhibits, the plaintiffs, as recited in the District Court's opinion, offered by reference affidavits of three former employees of the contractor showing the customs of payment and operation as bearing on the issue of whether they were government

[4] Rule 56 provides that the trial court may award summary judgment after motion, notice and hearing, provided the pleadings, depositions, admissions and affidavits on file show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.

employees or those of the private contractor. The affidavits do not appear in the record, but parts deemed relevant are set out in the court's opinion.

On this basis the District Court first denied summary judgment. 68 F. Supp. 576. It was of the view that the plaintiffs, whatever the forms of the transaction, were in reality employed by the Government and, hence, the Fair Labor Standards Act by its own terms did not cover them. But it held that they were covered by § 4 (b) of the Act of July 2, 1940,[5] and were entitled to recover overtime under it.

On rehearing, the court concluded, however, that no remedy under this latter Act was available to them in this action as it was not pleaded. Accordingly, it granted summary judgment against them. 70 F. Supp. 929. The Circuit Court of Appeals, Fifth Circuit, sitting *en banc* affirmed. 164 F. 2d 1016. It held that the plaintiffs were in substance employees of the United States, that munitions were not a part of commerce within the meaning of the Act, and that in any event munitions were not "goods" within the meaning of the Act. One judge, concurring, did not pass on the question whether petitioners were employees of the Government but held only that munitions were produced for war, not for commerce. One judge dissented on the ground that the whole system "was designed and operated so that the United States should not be the employer" and considered that munitions produced for transportation to a place outside of the State were produced for commerce and those engaged therein were subject to the Act. The case is here on certiorari, 333 U. S. —.

The Silas Mason Company, in a sense, is no more than a nominal defendant, for it is entitled to reimbursement from the Government. The Government, the ultimate

[5] Act of July 2, 1940, c. 508, 54 Stat. 712.

party in interest, appears through the Department of Justice in support of the claims against itself. But it advises us that "The Department of the Army is of the view that respondent's position has merit for the reasons set forth in the brief filed by respondent. The Army is concerned with the great cost to which the Government will be subjected if the numerous suits akin to this are lost, or even if it must bear the cost of defending them. Furthermore, the Army believes that the classes of employees involved in these cases were well paid, that they accepted their compensation without complaint or expectation of receiving more until this litigation was commenced sometime after the termination of their employment, and that accordingly there is little equity in the employees' present position."

Three Acts of Congress require consideration. The plaintiffs and the Government say the Fair Labor Standards Act is controlling. The defendant, the Department of the Army, which handled the transaction, and the District Court consider that the Act of July 2, 1940, controls the liability. But the trial court held it cannot be the basis of adjudication of plaintiffs' claims because no such issue was pleaded and that holding has become the law of the case since there has been no appeal. The plaintiffs pleaded their cause of action also under the Walsh-Healey Public Contracts Act,[6] but it was held unavailable to them below and their petition for certiorari to this Court raises no question as to that Act and acquiesces in dropping it from our consideration.

On the question as to who was the employer, on which this case was decided below, the complaint makes a clear, factual and simple allegation. It says that these plaintiffs were employed by the corporate defendant itself. This allegation has been overborne by interpreting the

[6] Act of June 30, 1936, 49 Stat. 2036, 41 U. S. C. § 35.

terms of the contracts between that alleged employer and a third party, that is, the Government, which terms may or may not have been known to the employees. There is substantial controversy as to the way these two parties, the Government and defendant in actual practice, construed their contracts, both sides of the controversy being based on events of which we are asked to take judicial notice or to spell out from contracts without the tests which trial affords. The plaintiffs in turn seek to counteract whatever inferences may be drawn from the defendant's version of dealings between defendant and the Government by contrary inferences from dealings between employees and the defendant. But they do not prove plaintiffs' own dealings, which are not in the record, but offer affidavits which relate specifically to "laborers and mechanics" while plaintiffs were inspectors and foremen, a difference that may be material. Insofar as the allegations of the complaint are impeached by the course of dealing between defendant and the Government, they are not supported by any course of dealing to which these plaintiffs were parties. What they were paid and on what basis, whether they have already been paid for overtime on the theory that one of the other Acts applies, we do not know.

Defendant's present position, which, for all we know, may or may not be shared by the Department of the Army, is that we do not need to settle the question as to whether defendant or the Government was the actual employer, that the effect of the war-time legislation was to set up a wholly new system of war production, which was neither private enterprise nor government operation, but an amalgamation of the two, which also prescribed a complete system of labor relation by statute which supercedes and precludes operation of the Fair Labor Standards Act. But this broad contention seems not to have been submitted to either court below, is not con-

sistent with the theoretical basis of their decisions and appears fully presented for the first time in the reply brief in this Court.

The short of the matter is that we have an extremely important question, probably affecting all cost-plus-fixed-fee war contractors and many of their employees immediately, and ultimately affecting by a vast sum the cost of fighting the war. No conclusion in such a case should prudently be rested on an indefinite factual foundation. The case, which counsel have described as a constantly expanding one, comes to us almost in the status in which it should come to a trial court. In addition to the welter of new contentions and statutory provisions we must pick our way among over a score of technical contracts, each amending some earlier one, without full background knowledge of the dealings of the parties. The hearing of contentions as to disputed facts, the sorting of documents to select relevant provisions, ascertain their ultimate form and meaning in the case, the practical construction put on them by the parties and reduction of the mass of conflicting contentions as to fact and inference from facts, is a task primarily for a court of one judge, not for a court of nine.

We do not hold that in the form the controversy took in the District Court that tribunal lacked power or justification for applying the summary judgment procedure. But summary procedures, however salutary where issues are clear-cut and simple, present a treacherous record for deciding issues of far-flung import, on which this Court should draw inferences with caution from complicated courses of legislation, contracting and practice.

We consider it the part of good judicial administration to withhold decision of the ultimate questions involved in

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[7] Rule 56 requires that summary judgment shall be rendered "if there is no genuine issue as to any material fact. . . ." See note 4.

this case until this or another record shall present a more solid basis of findings based on litigation or on a comprehensive statement of agreed facts. While we might be able, on the present record, to reach a conclusion that would decide the case, it might well be found later to be lacking in the thoroughness that should precede judgment of this importance and which it is the purpose of the judicial process to provide.

Without intimating any conclusion on the merits, we vacate the judgments below and remand the case to the District Court for reconsideration and amplification of the record in the light of this opinion and of present contentions.

*Judgments vacated.*

MR. JUSTICE BLACK thinks the judgment should be reversed.

MR. JUSTICE DOUGLAS concurs in the result.